

## ANTITHESIS OPERATIONS SOFTWARE AS A SERVICE TERMS AND CONDITIONS

These Antithesis Software as a Service Terms and Conditions (these **“Terms”**), together with the Sales Order that incorporate these Terms by reference and any other documents referred to therein, form the entire agreement (the **“Agreement”**) by and between Antithesis Operations LLC (**“Antithesis”**), a Delaware limited liability company having its principal place of business at 8607 Westwood Center Drive Suite #550, Vienna, VA. 22182, and the Company (as set forth in the Sales Order), effective as of the Sales Order Effective Date set forth in the Sales Order. Antithesis and Company may be collectively referred to herein as the **“Parties”** and each individually as a **“Party”**.

In consideration of the mutual promises set forth below and in a Sales Order, the Parties further agree as follows:

**1. DEFINITIONS.** In addition to any terms defined throughout these Terms, when used in these Terms and/or in a Sales Order, the following capitalized terms shall have the meanings indicated below:

1.1 **“Affiliate”** means an entity controlling, controlled by or under common control with a party. As used in this definition, the terms **“control”**, **“controlling”**, and **“controlled by”** shall mean the possession, directly or indirectly, of the power either to (a) vote 50% or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such person or (b) direct or cause the direction of the actions, management or policies of such person, whether through the ownership of voting securities or interests, by contract or otherwise.

1.2 **“Company Data”** means data, software, code, text, audio, video, images, or other content (including its schema, structure, sequence, and organization) that any Company user uploads to or runs on the Platform, including any Company Software.

1.3 **“Company Software”** means the Company’s software code, whether object code and/or source code, that is made available to Antithesis, which will be used by the Platform for purposes of identifying and diagnosing bugs through use of the Platform and/or the performance of the Services, as provided by Company to Antithesis.

1.4 **“Confidential Information”** means any and all information disclosed by one Party to the other Party, directly or indirectly, in writing, orally, electronically, or in any other form, that is designated, at or before the time of disclosure, as confidential or proprietary, or that is provided under circumstances reasonably indicating that the information is confidential or proprietary, including, without limitation, trade secrets, business plans, technical data, product ideas, personnel, contract and financial information, and these Terms and each Sales Order, as well as, specifically in the case of Company, the Company Data, the Company Software, the Container, and the Results, and specifically in the case of Antithesis, the Platform, Services and Technology and any Documentation or other proprietary materials describing the foregoing. Notwithstanding the foregoing, Confidential Information does not include information that: (a) is or becomes generally available to the public through no breach of the Agreement between the Parties or any other agreement by the recipient of the information; (b) is or was known by the recipient of the information at or before the time such information was received from the disclosure, as evidenced by the recipient’s tangible (including written or electronic) records; (c) is received from a third-party that is not under an obligation of confidentiality to the knowledge of the receiving Party with respect to such information; (d) is independently developed by the recipient of the information without any use of or reference to the disclosing party’s confidential information in breach of these Terms, as evidenced by the recipient’s contemporaneous tangible (including written or electronic) records; or (e) is approved for release in advance in writing by the disclosing Party, as applicable.

1.5 **“Container”** means an assemblage of runtime libraries, system components, program configurations, test data, utilities, and scripts that enables the execution of the Company Software, as provided by Company to Antithesis in connection with the use of the Platform and performance of the Services.

1.6 **“Documentation”** means all operating manuals, user manuals, training and marketing materials, guides, product descriptions, product specifications, technical manuals, supporting materials, and other information relating to the Platform and/or Services.

1.7 **“Intellectual Property Rights”** means any copyright, trademark, service mark, trade name, patent, patent application, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right arising under the laws of any jurisdiction, whether registered or unregistered.

1.8 **“Open Source Software”** or **“OSS”** means all software that is distributed under an open source license, including without limitation, the GNU Affero General Public License, GNU General Public License, GNU Lesser General Public License, Mozilla Public License, BSD licenses, and the Apache License.

1.9 **“OSS Results”** means coding faults, errors, bugs and flaws appearing within Open Source Software incorporated into the Company Software and identified by the Platform in the course of performing a Sales Order.

1.10 **“Platform”** means Antithesis’ proprietary autonomous software testing platform that enables customers to identify and diagnose faults in their software, as more particularly identified in a Sales Order, including all Technology related thereto.

1.11 **“POC Order”** means an online Sales Order for a proof of concept license to the Platform.

1.12 **“Purpose”** means the identification and diagnosis of faults in the Company Software via the Platform as described in these Terms and/or a Sales Order and enabling Antithesis to provide the Services pursuant to a Service Order.

1.13 **“Recommendations”** means Antithesis’ gratuitously provided recommendations and/or suggestions of known or potential fixes to any faults, errors, bugs and/or flaws identified within the Results.

1.14 **“Results”** means the reports provided by Antithesis to Company from (i) the use of the Platform for the Purpose and/or (ii) derived from the performance of the Services, including reports identifying faults, errors, bugs and/or flaws in the Company Software identified by the Platform.

1.15 **“Sales Order”** means a mutually executed order document by which Company orders access and use of the Platform and/or certain of the Services, which incorporates these Terms by reference.

1.16 **“Service(s)”** means such implementation, analysis, and issue resolution services provided by Antithesis in connection with the provision of the Platform, as may be more particularly identified in a Sales Order.

1.17 **“Technology”** means all software code and/or technology comprising all or a portion of the Platform, as made available by Antithesis for use by or on behalf of Company pursuant to these Terms, including any modified versions, updates or upgrades thereto that may be provided to Company by Antithesis from time to time, but does not include source code for the Platform.

## **2. PLATFORM AND SERVICES**

2.1 **Access to Antithesis Platform and Services.** (a) Subject to these Terms and the terms and conditions of an applicable Sales Order, Antithesis hereby grants Company the right, during the Term, to access and use the Platform specified in a Sales Order for use solely with respect to the Company Software and Container set forth on such Sales Order and solely for the Purpose.

(b) Antithesis shall provide Company with those Services set forth in a Sales Order from time to time in furtherance of Company’s use of the Platform. The Services may be modified upon the mutual written agreement of Company and Antithesis by amendment of such Sales Order. In the event of a conflict between the terms of the Sales Order

and these Terms, the Sales Order shall control. Antithesis reserves the right to promulgate additional usage restrictions with respect to Company's use of the Platform solely to the extent: (a) such restrictions apply to all of Antithesis' then-current and future customers and (b) Antithesis gives no less than 30 days' prior written notice to Company; provided that if Company cannot or will not comply with such restrictions, it may provide notice to Antithesis within 30 days with respect to the effectiveness of same, with specific disclosure as to Company's reasons for not accepting same (the "Company Objections"). If Antithesis is unable to resolve the Company Objections, it shall provide notice to Company within five (5) days of Company's notice at which time Company shall have the right to terminate the Agreement for a period of five (5) days from receipt of such notice and receive a pro rata refund of any pre-paid unused fees in connection with such termination. At the end of the 30-day period immediately following the date of Antithesis' initial notice to Company, if Company does not provide notice of any Company Objections or exercise its termination rights as set forth above, Company shall be bound by such additional restrictions for the remainder of the Term.

**2.2 Company Obligations.** Exclusive of any Technology comprising a part of the Platform and Services, Company shall be solely responsible, at its sole cost and expense, for (i) providing and maintaining all hardware, software, electrical and other physical requirements necessary for Company's use of the Platform and Services, including, without limitation, telecommunications and Internet access connections and links, web browsers, bandwidth, or other equipment, software and services required to access and use the Platform and Services, (ii) ensuring that all of the foregoing are compatible with the Platform and Services, and (iii) complying with all system requirements provided by Antithesis, including without limitation, the recommended Antithesis configuration procedures and Documentation.

**2.3 Permitted Use; Limited License.** Subject to Company's compliance with these Terms and any additional usage requirements, restrictions, documentation and policies Antithesis may provide to Company from time to time upon written notice to Company, Antithesis hereby grants to Company a limited, revocable, non-transferable (except as otherwise provided herein), non-sublicensable, non-assignable, non-exclusive license and right to access and use the Platform, as set forth in a Sales Order, including all Technology related thereto that Antithesis makes available to Company and any subsequent updates and upgrades thereto, during the Term, solely for the Purpose. Subject to Antithesis' compliance with these Terms, Company hereby grants to Antithesis a limited, revocable, non-transferable, (except as otherwise provided herein), non-sublicensable (except as otherwise provided herein), non-assignable, non-exclusive license and right to access and use the Company Software in order to perform the Services and produce the Results from use of the Platform, as may be set forth in a Sales Order.

**2.4 Restrictions.** Company agrees that Company will not, nor will Company allow or facilitate a third party to, directly or indirectly (i) reproduce or modify the Platform, Services and/or Technology, (ii) use any device, software or routine to interfere with the proper working of the Platform, Services and/or Technology, (iii) unless otherwise approved by Antithesis in writing, use any automated means, including, without limitation, agents, robots, scripts or spiders, to access, monitor or copy the Platform, Services and/or Technology, (iv) use the Platform, Services and/or Technology in violation of any applicable law, including without limitation the Computer Fraud and Abuse Act, and/or in connection with any scheme, effort and/or undertaking to hack any third party computer system and/or software, or (v) use the Platform, Services and/or Technology in any manner other than as permitted by the Agreement. Without limiting the foregoing, Company further agrees that it will not take any action that imposes an unreasonable or disproportionately large load on the Platform infrastructure, as reasonably determined by Antithesis. Antithesis reserves all rights not expressly granted under these Terms.

**2.5 Performance Standard; Retention.** In the event that Company shall discover material deficiencies in the Results at any time within thirty (30) days of the date such Results are first delivered by Antithesis to Company, Antithesis shall undertake a supplemental review of the Results and if it agrees with Company's determinations as to the existence of a material deficiency, Antithesis shall use commercially reasonable efforts to remediate such material deficiencies and re-deliver to the Company the Results at no additional charge to Company. The foregoing remedy shall be Company's exclusive remedy for material deficiencies in the Results unless otherwise agreed in an applicable Sales Order. Nothing herein shall be deemed to impose any obligation on Antithesis to undertake efforts outside of or beyond that which the Platform is then-capable of performing. Notwithstanding the foregoing,

Antithesis shall have no obligations with respect to material deficiencies arising from changes and/or modifications to the Company Software made after the delivery of the Results. Unless otherwise set forth in a Sales Order, Antithesis reserves the right to permanently delete all Results from Antithesis's environment at any time that is six (6) months from the date of creation or receipt. Company acknowledges and agrees that Antithesis may, but is not obligated to, provide Company with Recommendations. All Recommendations are provided gratuitously, without compensation from Company to Antithesis, and are provided "as-is" and "with all faults" without representation or warranty of any kind. Company's use of any of the Recommendations is at Company's sole risk in all respects.

### **3. FEES AND PAYMENT TERMS.**

3.1 **Fees.** Company shall pay Antithesis the fees set forth in the Sales Order with respect to the Platform access and/or applicable Services provided thereunder. Unless otherwise stated in such Sales Order and except for a POC Order, all amounts will be due and payable in full within thirty (30) days of the date of Antithesis' invoice to Company. Except with respect to a POC Order, Antithesis reserves the right to charge a late fee of 1.5% of the invoice's value per month, or the highest rate allowed by applicable law, whichever is lower, if payment in full is not received by the due date. In addition, except with respect to a POC Order, Antithesis reserves the right to terminate and/or suspend the provision of Platform and/or Services hereunder upon ten (10) days prior written notice to Company of a failure to timely pay an invoice. Except with respect to a POC Order, Company shall be liable for all costs of collection, including attorneys' fees and costs to the extent an invoice is not paid when due.

3.2 **Expenses.** Company agrees to pay the reasonable and necessary actual out-of-pocket expenses incurred by Antithesis in furtherance of its performance of any Services, provided such expenses are identified in a Sales Order and/or approved by Company by its prior written consent (email sufficing). Upon request, Antithesis will provide copies of supporting documentation as may be reasonably appropriate for Company or its accountants to confirm the nature and amount of any such expenses. Antithesis shall invoice the Company for all expenses in the same manner as with fees for the Platform and/or Services and such invoices shall be subject to the same terms as invoices for fees set forth in Section 3.1 above.

3.3 **Dispute Resolution.** In the event Company disputes any fees or expenses owed to Antithesis pursuant to these Terms or an applicable Sales Order, it must provide written notice of such dispute within thirty (30) days of the date a disputed amount was otherwise due and owing to Antithesis. Upon timely submission of a notice of dispute pursuant to this Section 3.3, the Parties will work in good faith to resolve this dispute for a period of thirty (30) days and if, at the end of such thirty (30) day period, no resolution has been reached and Antithesis continues to assert that the invoiced amounts were properly billed, Antithesis may immediately terminate the Agreement and the Parties may pursue their respective rights under applicable law. In the event a notice of dispute is not timely received, Company shall be deemed to have conclusively accepted the accuracy of Antithesis' calculation of fees and expenses under the applicable invoices and to have waived any further rights to challenge or dispute such compensation calculation.

3.4 **Taxes.** Except in connection with a POC Order, Company shall be responsible for paying all federal, state, local, foreign or other taxes, duties, tariffs or other charges, however designated, arising from or based upon these Terms or a Sales Order, or the transactions contemplated by either of them, except for taxes based on Antithesis' income, provided all such taxes, duties, tariffs and other charges are clearly set forth in the invoice issued by Antithesis.

3.5 **Audit.** For the sole purpose of determining the accuracy of amounts invoiced under this Section 3, Company shall have the right, at Company's expense, to have an independent auditor mutually acceptable to both Parties conduct an inspection and audit of all the relevant accounting and sales books, records, agreements, and documents of Antithesis, during regular business hours at Antithesis' offices and in such a manner as not to interfere unreasonably with Antithesis' normal business activities. In no event shall such audits be conducted hereunder more frequently than once every twelve (12) months. Prior to commencing any such inspection and audit, any such independent auditor shall have entered into an agreement with Company which prohibits the disclosure of any information relating to Antithesis to any party, including Company, except that such auditor may issue a report to

Company, the sole purpose of which shall be to report to Company the accuracy of amounts invoiced hereunder, including a summary of and sufficient detail regarding the scope, quality, and methodology of such compliance or lack thereof. In the event any such audit demonstrates a discrepancy; the beneficiary of such discrepancy shall pay to the other Party hereto the amount of such discrepancy.

#### **4. INTELLECTUAL PROPERTY**

**4.1 Proprietary Rights.** (a) As between Antithesis and Company, Company owns all right, title and interest, including without limitation all Intellectual Property Rights, in and to the Container(s), the Company Data, the Company Software, and the Results (collectively, the "Company Property"). Antithesis is prohibited from the use of the Company Property for any purpose not set forth in these Terms or an applicable Sales Order. Antithesis acknowledges such ownership and will not take any action to jeopardize, limit or interfere in any manner with Company's rights with respect to the Company Property. The Company Property are protected by copyright and other intellectual property laws and by international treaties. Antithesis acknowledges and agrees that the Results shall be "Work Made For Hire" and Company shall own all, right, title and interest in and to the Results, including without limitation, all Intellectual Property Rights therein, subject only to the rights set forth in these Terms with respect to the use by Antithesis of the Results. To the extent the Results are determined not to constitute a "Work Made For Hire" as a matter of law, Antithesis irrevocably assigns and transfers all right, title and interest in and to the Results to Company. To the maximum extent permitted by applicable law, Antithesis waives all moral rights in the Results. At the request and expense of Company, Antithesis shall take such steps as may be necessary or desirable, in Company's reasonable discretion, in order for Company to secure, or for Antithesis to assign, transfer and convey any of the foregoing to Company. Notwithstanding anything to the contrary set forth above, Company acknowledges and agrees that certain faults, errors, bugs and/or flaws in the Company Software identified in the Results may only be re-created or visualizable from use of portions of the Platform and that nothing set forth above shall be deemed to grant Company any license to continued use of the Platform after the Term of the applicable Sales Order. Further, Company acknowledges and agrees that (i) faults, errors, bugs and/or flaws identified in Company Software may not be unique to the Company Software, (ii) may be found in the software of other third parties, and (iii) while the Results are Company Property, nothing herein prevents Antithesis from identifying the existence of the same or similar faults, errors, bugs and/or flaws in the software of a third party and including same in such third party's "Results".

(b) As between Antithesis and Company, Antithesis owns all right, title and interest, including without limitation all Intellectual Property Rights, in and to the Platform, the Services, the Technology, and the Documentation (the "Antithesis Property"). Company is prohibited from the use of the Antithesis Property for any purpose not set forth in these Terms or an applicable Sales Order. Company acknowledges such ownership and will not take any action to jeopardize, limit or interfere in any manner with Antithesis' rights with respect to the Antithesis Property. The Platform and Software are protected by copyright and other intellectual property laws and by international treaties.

**4.2 No Reverse Engineering.** (a) Except as provided in Section 2.3 above, Company has no rights or licenses with respect to the Antithesis Property. Without limiting the generality of the foregoing, except as expressly provided in these Terms, Company may not (a) sell, resell, copy, distribute, rent, lease, lend, sublicense, transfer, assign or make the Antithesis Property available to any third party or use the Antithesis Property on a service bureau basis, except that Company may make the Antithesis Property available to its Affiliates that have been approved by Antithesis in writing, provided such Affiliates comply with these Terms and Company remains liable for any breach by its Affiliates of these Terms and/or the applicable Sales Order, (b) modify, decompile, reverse engineer, or disassemble the Antithesis Property or otherwise attempt to derive any of Antithesis' Intellectual Property Rights in the Antithesis Property, (c) create derivative works based on the Antithesis Property (provided that nothing herein limits Company's use of the Results and the Recommendations); or (d) modify, alter, delete, remove, or obscure any copyright, trademark, patent or other proprietary notices or legends that appear on or are affixed to the Antithesis Property during the use and operation thereof. As between Company and Antithesis, any changes to, modifications to, or derivative works of the Antithesis Property shall become the exclusive property of Antithesis.

(b) Except as provided in these Terms to the contrary, Antithesis has no rights or licenses with respect to the Company Property. Without limiting the generality of the foregoing, except as expressly provided in these Terms, including as necessary to perform Antithesis' obligations pursuant to these Terms and/or any applicable Sales Order, Antithesis may not (a) sell, resell, copy, distribute, rent, lease, lend, sublicense, transfer, assign or make the Company Property available to any third party, (b) modify, decompile, reverse engineer, or disassemble the Company Property or otherwise attempt to derive any of Company's Intellectual Property Rights in the Company Property, (c) create derivative works based on the Company Property; or (d) modify, alter, delete, remove, or obscure any copyright, trademark, patent or other proprietary notices or legends that appear on or are affixed to the Company Property. As between Company and Antithesis, any changes to, modifications to, or derivative works of the Company Property shall be and remain the exclusive property of Company. Notwithstanding all of the foregoing, (a) Company acknowledges that the use of the Platform and the performance of the Services is principally focused on identifying and diagnosing faults, errors, bugs and/or flaws in the Company Software, and in connection with the foregoing, (b) Antithesis will specifically decompile, reverse engineer, and/or disassemble the Company Software in the manner enabled by the Platform, and (c) provide the software to a third party cloud server environment to host the Company Software to permit Antithesis to perform its obligations under these Terms and/or a Sales Order.

4.3 **No License.** Nothing in these Terms shall be deemed to grant Company any license to use the Antithesis Property other than as expressly stated herein or in an applicable Sales Order.

4.4 **Feedback.** Company may, but is not obligated to, provide or submit any suggestions, feedback, comments, ideas, or other information relating to the Antithesis Property or modifications or enhancements thereto (the "Company Input"). Any Company Input is provided on a non-confidential basis regardless of any suggestion to the contrary in any Company communication, and Company hereby grants Antithesis a nonexclusive, worldwide, royalty-free, perpetual, irrevocable, sublicensable, transferable right and license to exploit such Company Input (directly or through third parties) in any manner without compensation or liability to Company for any purpose whatsoever, including, but not limited to, developing, manufacturing, enhancing, improving, promoting, and marketing Antithesis' products and services.

4.5 **Use of OSS Results; Third Party Software.** To the extent that OSS Results are identified in the course of performance of these Terms and/or a Sales Order, the Parties shall work together to establish a timeline after which Antithesis may disclose such OSS Results to the source of such Open Source Software, provided (i) the Parties shall work together in good faith to ensure disclosure of such OSS Results will not jeopardize Company's ability to address such OSS Results identified within the Company Software prior to such disclosure; and (ii) Antithesis may not identify Company or its products as associated with such OSS Results. Further, to the extent the Results demonstrate a flaw or bug with respect to any third party software comprising a portion of the Company Software, the Parties shall work together in good faith to determine the appropriate disclosure of such flaws and/or bugs to the applicable third party, but without jeopardizing Company's ability to address such flaws and/or bugs prior to such disclosure; provided that Antithesis may not identify Company or its products as associated with such flaw or bug.

## 5. CONFIDENTIALITY

5.1 **Restrictions on Use and Disclosure.** Each Party agrees: (i) to protect and safeguard the other Party's Confidential Information against unauthorized use, publication or disclosure with the same degree of care that it uses to protect the confidentiality of its own Confidential Information and, in any event, not less than reasonable care; (ii) to restrict access to the other Party's Confidential Information to those of its officers, directors, employees, agents, attorneys, accountants, investment advisors, and contractors who have confidentiality obligations that afford the Confidential Information a substantially similar level of protection as is afforded by these Terms; and (iii) not to use, or permit others to use, the other Party's Confidential Information except as is reasonably necessary to perform its obligations or exercise its rights under these Terms. Each Party shall return or destroy all Confidential Information of the other Party upon the termination or expiration of the Agreement or upon the request of the other Party; provided, however, neither Party shall be required to return or destroy information or materials that it must retain during or after termination or expiration of the Agreement in order to receive the benefits of the

Agreement or properly perform in accordance with these Terms or in order to remain compliant with a valid law, regulation, or court or administrative order. Antithesis will make all Company Data available for Company to retrieve for sixty (60) business days following any expiration or termination of the Agreement and thereafter securely and permanently delete all Company Data, except to the extent, and only for so long as, retention is mandated under applicable law (e.g., a litigation hold) as notified by Antithesis to Company.

5.2 **Exceptions.** Notwithstanding any other provision of these Terms, each Party may disclose Confidential Information of the other Party if such disclosure is required by an order of a court or other governmental authority, law or regulation, but only to the extent that any such disclosure is necessary and after notice to the other Party if practicable and lawful. In such case, the Party required to make the disclosure shall, at the other Party's expense, assist the other Party in obtaining an order protecting the Confidential Information from public disclosure, or in otherwise minimizing and limiting the breadth and scope of such disclosure.

5.3 **Confidentiality of Agreement.** Each Party agrees that the terms and conditions, but not the existence and general nature, of the Agreement, including each Sales Order, shall be treated as Confidential Information, provided, however, that each Party may disclose the terms and conditions of the Agreement, including a Sales Order: (i) as required by any court or other governmental body, subject to the provisions of Section 5.2; (ii) in connection with an initial public offering or other securities filing; (iii) to legal counsel of the Parties; (iv) in confidence, to accountants, banks, and financing sources and their advisors; (v) in confidence, in connection with the enforcement of the Agreement or rights under the Agreement; or (vi) in confidence, in connection with an actual or prospective merger, acquisition or similar transaction, provided that the Party seeking to so disclose pursuant to (i), (ii), or (vi) above must provide advance written notice to the non-disclosing Party of any proposed disclosure and provide the non-disclosing Party with an opportunity to request appropriate protections of its Confidential Information (e.g., protective order or confidential treatment) and shall assist in such efforts using its reasonable best efforts.

5.4 **Remedies.** Each Party understands and acknowledges that any disclosure or misappropriation of any of the disclosing Party's Confidential Information in violation of these Terms may cause the disclosing Party irreparable harm, the amount of which may be difficult to ascertain and, therefore, agrees that the disclosing Party shall have the right to apply to a court of competent jurisdiction for an order restraining any such further disclosure or misappropriation and for such other relief as the disclosing Party shall deem appropriate. Such right of the disclosing Party shall be in addition to the remedies otherwise available to the disclosing Party at law or in equity.

## 6. TERM AND TERMINATION

6.1 **Term.** Unless terminated earlier by either Party in accordance with Section 6.2, the Agreement shall commence on the Sales Order Effective Date and remain in effect through the end date of such applicable Sales Order (the "**Term**") provided that it is understood and agreed that Sales Orders shall automatically renew unless otherwise set forth in the applicable Sales Order, provided that there shall be no automatic renewals of POC Orders.

6.2 **Termination.** Each Sales Order and the provision of the Platform and/or Services may be terminated immediately upon written notice:

- (a) by either Party if the other Party breaches any material provision of the Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of such breach;
- (b) as may be specified in an applicable Sales Order, with respect to the Services to be provided through such Sales Order, which termination shall not impact the validity of these Terms generally or any other Sales Order;
- (c) solely with respect to a POC Order, by either Party for its convenience, provided that (i) no refund shall be provided to the Company if Company terminates pursuant to this Section 6.2(c), and (ii)

Antithesis shall provide Company a pro rata refund from the date of termination through the remainder of the Term if Antithesis terminates pursuant to this Section 6.2(c); or

(d) by either Party (i) if the other Party becomes insolvent, (ii) makes an assignment for the benefit of creditors, (iii) files or has filed against it a petition in bankruptcy or seeking reorganization, (iv) has a receiver appointed, or (v) institutes any proceedings for the liquidation or winding up; provided, however, that, in the case any of the foregoing is involuntary, such Party shall only be in breach if such petition or proceeding has not been dismissed within ninety (90) days.

**6.3 Effect of Termination or Expiration.** Upon termination or expiration of the Agreement: (i) Antithesis shall deauthorize Company's access to the Platform and/or Services provided pursuant to such Sales Order, and Company shall immediately cease all use of the Platform and Services made available in connection with such Sales Order. In the event of termination, except in the event of a termination by Company as a result of Antithesis' breach of the Agreement or as otherwise provided in Section 6.2(c) above, Company shall not be entitled to a refund or credit of any of the undisputed fees described in Section 3 or an applicable Sales Order, and Antithesis will promptly issue an invoice for any additional fees, if any, payable by Company with respect to the calendar month in which the date that such termination occurs. In the event of termination by Company as a result of Antithesis' breach of the Agreement, Antithesis will promptly refund to Company a pro rata portion of any pre-paid, unused fees.

**6.4 Survival of Provisions.** Sections 1, 2.4, 3, 4, 5, 6.3, 6.4, 7.3, 8, 9 and 10 of these Terms, as well as any other terms hereof that by their intent or meaning would reasonably be deemed as intended to so survive, shall survive any termination or expiration of the Agreement. No termination hereunder shall constitute a waiver of any rights or causes of action that either Party may have based upon events occurring prior to the termination date.

## **7. Warranties.**

**7.1 Mutual Warranties.** Each Party hereby represents, warrants, and covenants to the other that: (i) it has the power to enter into and perform the Agreement; (ii) the execution of each Sales Order has been duly authorized by all necessary corporate action of the Party; (iii) the Agreement, including each Sales Order constitutes a valid and binding obligation on the Party, enforceable in accordance with its terms; (iv) no consent or approval of any other person or governmental authority is necessary for the Agreement to be effective; (v) neither the execution or delivery of a Sales Order nor the consummation of the transactions contemplated by such applicable Sales Order and these Terms would constitute a default or violation of the Party's charter documents and/or other agreements; and (vi) it will comply with all applicable laws in the performance of its obligations under the Agreement.

**7.2 Antithesis Warranties.** Antithesis hereby represents that the Platform provided to Company does not and will not knowingly violate or infringe upon the United States Intellectual Property Rights of any third party, and that the Platform as provided to Company does not include any content or functionality or any programming devices (e.g., viruses, key locks, etc.) that would permit Antithesis personnel or other third parties to access any of Company's equipment connected to the Platform without Company's authorization. Antithesis will provide commercially reasonable levels of security for the Platform and all Services provided by Antithesis hereunder and networks being utilized by Antithesis in connection with the provision of the Platform and/or Services hereunder, in accordance with its Data Retention and Security Policy. Antithesis further represents and warrants that (i) the Services will be performed in a professional and workmanlike manner, (ii) it has all necessary licenses, work permits or other government approvals required of it to perform the Services; and (iii) it will perform the Services in accordance with all applicable laws, rules and regulations

**7.3 Company Warranties.** Company hereby represents and warrants that (a) the Company has all rights, title and interest in and/or all necessary licenses to provide the Company Software to Antithesis and to allow Antithesis to perform its obligations hereunder and pursuant to the Sales Order; (b) the Company Software does not and will not violate or infringe upon the Intellectual Property Right of any third party; and (c) the Company Software does not violate any applicable laws.



7.4 **Disclaimer.** EXCEPT AS EXPRESSLY STATED IN THESE TERMS OR AN APPLICABLE SALES ORDER, NEITHER PARTY MAKES ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, AND EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS EXPRESSLY STATED IN THESE TERMS OR AN APPLICABLE SALES ORDER, ANTITHESIS DOES NOT WARRANT THAT THE PLATFORM AND/OR SERVICES WILL (I) BE UNINTERRUPTED; (II) MEET COMPANY'S REQUIREMENTS; OR (III) OPERATE IN THE CONFIGURATION OR WITH THE HARDWARE OR SOFTWARE COMPANY USES. EXCEPT AS EXPRESSLY STATED IN THESE TERMS OR AN APPLICABLE SALES ORDER, COMPANY'S USE OF THE PLATFORM AND SERVICES IS SOLELY AT COMPANY'S RISK.

## 8. LIMITATIONS ON LIABILITY AND INDEMNITY

8.1 **Exclusion of Damages.** EXCEPT FOR EXCLUDED CLAIMS (AS DEFINED IN SECTION 8.2), NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES RELATING TO LOST PROFITS, LOST DATA OR LOSS OF GOODWILL) ARISING OUT OF OR RELATED TO THE AGREEMENT. THE FOREGOING LIMITATION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. NOTHING IN THIS SECTION 8.1 WILL BE CONSTRUED TO LIMIT EITHER PARTY'S OBLIGATION TO INDEMNIFY THE OTHER PARTY PURSUANT TO SECTION 9 FOR DAMAGES AWARDED TO A THIRD PARTY EVEN IF SUCH DAMAGES ARE CHARACTERIZED AS INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES SUFFERED BY THAT THIRD PARTY.

8.2 **Limitation on Liability.** EXCEPT FOR (i) A PARTY'S PAYMENT OBLIGATIONS, (ii) BREACH OF SECTIONS 2.4, 4 AND/OR 5, (iii) PERSONAL INJURY (INCLUDING DEATH) OR TANGIBLE PROPERTY DAMAGE, (iv) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND (v) THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 9 (COLLECTIVELY, the "EXCLUDED CLAIMS"), AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, IN NO EVENT WILL EITHER PARTY'S LIABILITY UNDER AN APPLICABLE SALES ORDER EXCEED THE AMOUNT OF FEES PAID BY COMPANY TO ANTITHESIS PURSUANT TO SUCH APPLICABLE SALES ORDER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION RELATING TO SUCH LIABILITY AROSE. ANTITHESIS' AGGREGATE LIABILITY TO COMPANY AND/OR ANY THIRD PARTY WITH RESPECT TO ANY EXCLUDED CLAIM SHALL BE LIMITED TO \$1,000,000 IN TOTAL IN ALL CIRCUMSTANCES.

## 9. INDEMNIFICATION.

9.1 **Indemnification from Company.** Company shall indemnify and hold Antithesis and its Affiliates, and their employees, representatives, agents, directors, officers, managers and members (the "**Antithesis Indemnified Parties**") harmless, and at Antithesis' option defend the Antithesis Indemnified Parties, from and against any damages, losses, costs, settlements, judgments, awards, fines, penalties, interest, liabilities, or expenses (including without limitation, reasonable attorneys' fees and disbursements and court costs) (collectively, "**Losses**") incurred in connection with any third-party claim, demand or action ("**Claim**") brought against any of the Antithesis Indemnified Parties arising out of (i) Company's use of the Platform and/or Services other than in accordance with these Terms, a Sales Order, and applicable law, or (ii) any alleged breach by Company of any provision of these Terms. Antithesis must promptly notify the Company of such Claim.

9.2 **Indemnification from Antithesis.** Antithesis shall indemnify and hold Company and its Affiliates, and their employees, representatives, agents, directors, officers, managers, members and/or shareholders (the "**Company Indemnified Parties**") harmless, and at Antithesis' option defend the Company Indemnified Parties, from and against any Losses incurred in connection with any Claim brought against any of the Company Indemnified Parties arising out of any allegation that the Platform violates or infringes upon the Intellectual Property Rights of any third party. Company must promptly notify Antithesis of such Claim. If any of the Platform becomes, or in Antithesis' opinion is likely to become, the subject of an infringement claim under these Terms, Antithesis may, at its sole option and expense, either (i) procure for Company the right to continue using the Platform, (ii) replace or

modify the Platform so that it becomes non-infringing, or (iii) solely if clauses (i) and (ii) are not commercially viable, terminate each Sales Order impacted thereby and refund the portion of fees paid for unused services, prorated according to the remaining term of any Service Orders impacted thereby then in effect. Notwithstanding the foregoing, Antithesis will have no obligation with respect to any infringement claim based upon (i) any use of the Platform in breach of these Terms, (ii) any use of the Platform in combination with other products, equipment, or software not supplied by Antithesis, where such combination gives rise to the Claim, (iii) any modification of the Platform by (a) any person other than Antithesis or its authorized agents or subcontractors or (b) by Antithesis or its authorized agents or subcontractors in compliance with the designs, specifications or instructions of Company, where such modification gives rise to the Claim; and (iv) continued allegedly infringing activity by Company after Company has been notified of the possible infringement and provided with a non-infringing version of the Platform.

9.3 **Indemnity Process.** Should any Claim subject to indemnity be made against a Party hereto (an "Indemnitee"), the Indemnitee agrees to provide the other Party (the "Indemnitor") with prompt written notice of the Claim (provided that any delay in notification will not relieve the Indemnitor of its obligations hereunder except to the extent that the delay impairs its ability to defend). The Indemnitor will control the defense and settlement of any Claim, provided that any such settlement shall require the prior written approval of the Indemnitee, such approval not to be unreasonably conditioned, withheld or delayed. The Indemnitee agrees to cooperate with the Indemnitor and provide reasonable assistance in the defense and settlement of such Claim. The Indemnitor is not responsible for any costs incurred or compromise made by the Indemnitee unless the Indemnitor has given prior written consent to the cost or compromise. If a conflict of interest arises between the Indemnitor and the Indemnitee for the types of claims set forth herein, and the Indemnitee under the appropriate section sends a written notice of such conflict of interest to the Indemnitor, then the Indemnitor under that section shall provide for the indemnification of the Indemnitee for (i) the cost to hire and retain separate counsel and (ii) the cost of investigation, litigation and/or settlement of such Claims. If a Claim is judicially determined to have been caused by both the Indemnitee and the Indemnitor, the apportionment of liability shall be shared between the Parties based upon the comparative degree of each Party's judicially determined responsibility and to the extent necessary, a refund of all pre-funded indemnity expenses shall be made if necessary, in accordance with the foregoing.

## 10. GENERAL TERMS

10.1 **Independent Contractors.** The relationship of Antithesis and Company established by the Agreement is that of independent contractors, and nothing contained in the Agreement will create or be construed to create any partnership, joint venture, agency, franchise, sales representative, employment or fiduciary relationship between the Parties. Antithesis will be solely responsible and liable for any employment-related taxes, insurance premiums, or other employment benefits respecting Antithesis's performance of any Services hereunder. Neither Antithesis nor any of Antithesis's employees, contractors, agents, or Subcontractors will be eligible to receive any benefits (including cash, bonus, stock, restricted stock options, health insurance, or retirement benefits) normally provided by Company to its employees. Neither Party will make any commitment, by contract or otherwise, binding upon the other or represent that it has any authority to do so.

10.2 **Governing Law; Jurisdiction.** Except to the extent, if any, applicable law requires otherwise, these Terms and each Sales Order shall be construed in accordance with and governed by the laws of the Commonwealth of Virginia, United States of America, excluding its conflict of law provisions. Unless otherwise agreed in writing, all disputes relating to these Terms or any applicable Sales Order (excepting any dispute relating to Antithesis' or its licensors' or suppliers' Intellectual Property Rights) shall be subject to final and binding arbitration in Fairfax County, Virginia, United States of America under the auspices of a single arbitrator pursuant to the commercial arbitration rules of the American Arbitration Association then in effect, with the losing Party (as determined by such arbitrator) paying all costs and attorney fees. Neither these Terms nor any Sales Order entered into hereunder shall be governed by the United Nations Convention on Contracts for the International Sale of Goods.

10.3 **Assignment.** Neither these Terms nor any applicable Sales Order may be assigned, in whole or in part, by Company without the prior written consent of Antithesis, not to be unreasonably withheld. The preceding requirement for Company to obtain prior written consent of Antithesis shall not apply to any assignment resulting

from Company being involved in a merger, acquisition or similar transaction; in such a case, Company shall have no obligation to obtain prior written consent of Antithesis. Antithesis shall have the right to assign or otherwise transfer the Agreement or any of its rights or obligations hereunder. Any purported assignment, sale, transfer, delegation or other disposition by Company, except as permitted herein, shall be null and void. These Terms and each applicable Sales Order shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

10.4 **Recovery of Fees by Prevailing Party.** If any legal action, including, without limitation, an action for arbitration or equitable relief, is brought by one Party against the other Party relating to these Terms or a Sales Order or the breach or alleged breach hereof or thereof, the prevailing Party in any final judgment or arbitration award, or the non-dismissing Party in the event of a voluntary dismissal by the Party instituting the action, will be entitled to reimbursement from the other Party for the full amount of all reasonable expenses, including all court costs, arbitration fees and actual attorneys' fees paid or incurred in good faith.

10.5 **Non-Solicitation.** During the Term and for a period of twelve (12) months thereafter, Company shall not, directly or indirectly, in any manner solicit or induce for employment any person who performed any work pursuant to a Sales Order on behalf of Antithesis. A general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the Internet, shall not be construed as a solicitation or inducement for the purposes of this Section.

10.6 **Severability.** If the application of any provision of these Terms or any applicable Sales Order to any particular facts or circumstances will be held to be invalid or unenforceable by an arbitration panel or a court of competent jurisdiction, then (a) the validity of other provisions of these Terms or any applicable Sales Order will not in any way be affected thereby, and (b) such provision will be enforced to the maximum extent possible so as to effect the intent of the Parties and reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

10.7 **Waiver.** Waivers, to be binding, must be made in writing, referring to the Agreement and signed by the Party whose right is waived. A waiver of a Party's breach of any provision of these Terms or an applicable Sales Order will not operate as or be deemed to be a waiver of that Party's prior, concurrent or subsequent breach of that or any other provision of these Terms and/or Sales Order.

10.8 **Force Majeure.** Neither Party will be deemed in default of these Terms or a Sales Order to the extent that performance of its obligations (other than payment obligations) or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, riots, acts of government, acts of war or terrorism, shortage of materials or supplies, failure of transportation or communications or of suppliers of goods or services, or any other cause beyond the reasonable control of such Party.

10.9 **Notices.** Any notice or approval desired or required to be provided to a Party hereunder will be given to such Party in writing by personal delivery (notice deemed effective upon receipt), overnight messenger (notice deemed effective the business day after such messenger's acceptance (which acceptance must occur before such messenger's required deadline) for next business day service), mail (notice deemed effective three (3) days after mailing), facsimile transmission with follow-up copy by mail (notice deemed effective upon electronic confirmation of facsimile receipt), or e-mail (notice deemed effective upon receipt of a return e-mail, other than an automatically generated return e-mail, indicating that the e-mail notice has been received), addressed to such Party at the address for such Party specified in the introductory paragraph of these Terms (in the case of Antithesis) and at the address for Company set forth in the Sales Order. A Party may designate a substitute address by written notice to the other with the effectiveness of such notice governed by the terms of this Section. If the final day for giving notice is a Saturday, Sunday or nationally recognized holiday then the time for giving such notice will be extended to the next business day.

10.10 **Counterparts.** Each Sales Order may be executed in two or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. Electronic, facsimile or scanned signatures shall have the same force as an original signature.

10.11 **Entire Agreement.** These Terms along with each applicable Sales Order constitutes the entire agreement between the Parties with respect to the subject matter hereof, and these Terms along with each applicable Sales Order supersedes all prior agreements or representations, oral or written, regarding such subject matter. Use by Company of shrink wrap agreements, click wrap agreements, Sales Orders with pre-printed terms or terms on the side opposite Antithesis' signature and similar acknowledgements shall specifically be of no force or effect and shall not serve to modify, amend or supersede these Terms or the applicable terms of the Sales Order.

10.12 **Amendments.** These Terms and each Sales Order may be amended only by a writing signed by both Parties.

10.13 **Controlling Language.** The controlling language of these Terms is English. Company agrees to bear any and all costs of interpreters if necessary.

10.14 **Headings.** The headings to the sections of these Terms are used for convenience only.

10.15 **Marketing.** Company hereby grants to Antithesis a non-transferable, non-exclusive, non-sublicensable, royalty free right and license to use and display the trade name and trademarked logo (collectively, "Marks") of the Company in fulfillment of its obligations under these Terms and an applicable Sales Order and in other promotional materials for Antithesis' business and services for the purpose of promoting the existence of the relationship between the Parties established by the Sales Order. Antithesis may issue a press release relating to the relationship of the Parties established by a Sales Order.

10.16 **Export Control.** Unless otherwise specified in writing, the Platform is intended strictly for domestic use in the United States. If transnational licensing is anticipated, and except as otherwise specified in the Agreement, Company shall (with the timely cooperation of Antithesis) obtain all necessary or appropriate licenses, permits or other governmental authorizations or approvals. Each Party shall indemnify and hold the other harmless from, and bear all expense of, complying with its respective country's laws, regulations or requirements pertaining to the importation, exportation, or use of the technology to be provided herein. Neither Party shall take any action, nor omit to take any required action, which would cause the other Party to violate the Foreign Corrupt Practices Act of 1977 or the U.S. Export Administration Regulations.

10.17 **Government Restricted Rights.** Use, duplication or disclosure by the United States Government, its agents, contractors, subcontractors, or employees is subject to all restrictions imposed by law, regulation or government directive including but not limited to those restrictions set forth in DFARS 252.227 7013 and 48 CFR 52.227 19, as applicable and applied to "Commercial" computer software within the meaning of the acquisition regulations(s) applicable to the procurement. These Terms shall pertain to the government's use and disclosure of the Platform and/or Software and shall supersede any conflicting contractual terms or conditions. If these Terms fails to meet the government's needs or is inconsistent in any respect with the federal law of the United States of America, the government agrees to return the Software, unused, to Antithesis and immediately terminate each applicable Sales Order.

***[End of Terms]***